

APPROVED

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, December 7, 2007

**Perimeter Center
9960 Mayland Drive, Suite 200
Richmond, Virginia 23233-1463
Board Room 3**

CALL TO ORDER: A meeting of the Virginia Board of Dentistry was called to order at 9:00 a.m.

PRESIDING: Paul N. Zimmet, D.D.S., President

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Myra Howard
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Whitley-Ryals, Director for the Agency
Emily Wingfield, Chief Deputy Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Catherine Chappell, Administrative Staff Assistant

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

QUORUM: All ten members of the Board were present.

PUBLIC COMMENT: **Timothy K. Johnston, DDS** addressed the Board with respect to his written request that the Board issue an opinion on whitening centers. He asked for Board clarification on zoom lights as opposed to other light products. He remarked that he sought clarification on these issues to avoid any misunderstanding with competitors.

Kimberly Silloway, DDS presented a power point presentation on the use of anesthesia assistants. She asked for the Board to consider requiring certified anesthesia assistants with respect to the

sedation and analgesia team.

Warren West, DDS spoke as president of Virginia Oral and Maxillofacial Surgeons Society and asked that the Board consider Dr. Silloway's request to require certified anesthesia assistants. He referenced his email to the Board in which he requested clarification of the anesthesia regulations.

**APPROVAL OF
MINUTES:**

Dr. Zimmet asked if the Board members had reviewed the minutes from the September 6, 2007 formal hearing; September 7, 2007 formal hearing; September 7, 2007 public hearing; September 7, 2007 board meeting; October 27, 2007 public hearing; and November 30, 2007 conference call. Ms. Sissom moved to accept the minutes of the September 6, 2007 formal hearing; September 7, 2007 formal hearing; September 7, 2007 public hearing; September 7, 2007 board meeting; October 27, 2007 public hearing; and November 30, 2007 conference call as written. The motion was seconded and carried.

Mr. Casway asked for reconsideration of the September 7, 2007 board meeting minutes so that the Board Counsel Report might be amended to more accurately state his report on litigation. He read the language he would like to be recorded. Dr. Young moved to adopt Mr. Casway's amendments and to approve the September 7, 2007 board meeting minutes as amended. The motion was seconded and carried.

REPORTS:

Board of Health Professions. Dr. Gokli reported on the following activities of the Board:

- A meeting was held with the AARP to discuss Virginia being a model for their initiative for addressing the continuing competence of healthcare professionals. The AARP will be introducing legislation to set a date requiring demonstration of continuing competency. Dr. Carter collected information on the various boards' requirements for continuing education for the meeting. Ms Yeatts added that the AARP does not consider continuing education as evidence of continued competency, but rather is looking for a mechanism to assess current clinical competency.
- Received a report from Ms. Ryals on the Health Reform Commission's work on improving access to health care, which is being reviewed by the Governor.
- Reviewed the progress being made towards meeting the

key performance measures, noting that DHP had adjusted the counting of the number of days a case is open from calendar days to business days for purposes of assessing performance on the 250 day target for resolving patient care cases.

- Dr. Carter is reviewing the Board of Medicine's use of CCA's.
- Received an update on the use of the Agency website for publishing disciplinary letters from boards in cases with no violation. Dr. Gokli advised that the Board of Medicine is no longer posting notices and closure letters when no violation was found. Ms. Reen added that the Board of Medicine licensees may request that such documents which are already posted be removed from the website. However, the documents will continue to be available to the public upon request. License Lookup will still show that public information is available on cases closed without a violation.

SRTA. Dr. Watkins advised that several conference calls had been conducted since his last report.

- The September conference call included a vote to allow PDA's as part of the examination process. Additional approval of payment to associate members was made, with a maximum reimbursement of \$1000. Dr. Watkins commented that the president elect was not available for the conference call and that no discussion was held on hiring a new executive director.
- The October conference call included a vote to approve PDA's at a cost of \$21,000. He noted that the formatting of the dental candidate guides was ongoing and that the president elect was not involved in the call.
- The November conference call included a discussion on the criteria for the new executive director. The next board meeting is scheduled for January, with the goal of reviewing a draft advertisement for the position in anticipation of have the new director in place by the 2008 annual meeting. Dr. Watkins noted that again the president elect was not on the call so the current president was charged with asking the president elect if he had any issues to prevent him from serving the next term.

Cosmetic Procedures Quality Assurance Review Conference.

Dr. Watkins advised that the conference was held in October and referenced the power point presentation in the agenda packet for informational purposes only. He remarked that the conference was well attended and response was positive.

Legislative/Regulatory Committee. Dr. Snyder advised that the Committee met on December 5, 2007 and is recommending:

- Amendment of the monitoring provision for nitrous oxide in the proposed regulations for administration by dental hygienists.
- Undertaking fast track action to add the inspection fee to the regulations.
- Granting continuing education credit to licensees passing the law exam.
- Withdrawing the NOIRA for informed consent and address consent during regulatory review.

He also noted that regulatory review is underway to address consistency between statutes and regulations and the plans to include interested parties in the process.

AADE Meeting. Dr. Zimmet and Dr. Watkins provided an overview of the AADE meeting, noting that presentations were given on sexual boundaries as well as on the new ADA documents on anesthesia. Discussions with respect to ethical concerns, particularly cheating in dental schools, were also held during the meeting.

AADA Meeting. Ms. Reen reported that the administrators' meeting held in conjunction with the AADE meeting also addressed cheating in the electronic age as well as detecting lying with respect to assessing the credibility of testimony.

Accreditation Site Visits. Ms. Sissom referred the Board to her report in the Agenda package and stated that she found the site visit to be beneficial to both herself as well as the school. Dr. Pirok added that he also attended site visits for two dental programs.

Dr. Watkins commented that the Board should take the opportunity to participate in CODA site visits when invited, since the Board member can address matters that the school may not be providing. Such representation would provide broader participation than serving in an advisory capacity.

Executive Committee Report. Dr. Zimmet reported that the Executive Committee met and would be recommending that the Bylaws be amended to include knowledgeable professionals as well as Board members as agency subordinates.

**DHP DIRECTOR'S
REPORT**

Ms. Ryals thanked the Board for meeting with her and provided the following information:

- Budget requests have been made and are under consideration by the Governor with the goal of adding staff resources to assist in disciplinary and licensure case loads in accordance with the key performance measures initiative.
- The Prescription Monitoring Program received a settlement award which is being held in trust, with the interest used to support the program.
- Plans to establish a data center for the healthcare workforce had begun.
- Legislation on two classes of dental assistants regulation has been approved for introduction by Governor Kaine.
- The target of 250 days to complete disciplinary cases continues to be a challenge for the Board but she anticipated significant results in 2008. Ms. Reen added that the Board undertook a "blitzing" recently, whereby over 20 disciplinary cases were reviewed by Board members. Additionally, Ms. Ryals applauded the Board for its actions in changing the composition of the committees from three board members to two in order to review more disciplinary cases.
- She is reviewing other states' implementation of a "user pay" feature for disciplinary cases. She indicated that the BHP is in support of this action. Ms. Reen offered the Board's assistance.
- HPIP's five year agreement with the Department of Psychiatry at VCU has been extended one year. Dr. Zimmet inquired as to the Agency providing educational programs such as the recent Prescription Monitoring Program conference. Ms. Ryals advised that such outreach and educational programs are Agency goals.
- The Perimeter Conference Center has added AV enhancements and security is contracted through the Department of General Services.

**LEGISLATION AND
REGULATION:**

Update on Proposed Legislation for 2 Classes of Dental Assistants. Ms. Yeatts advised that the bill had been submitting for drafting and was awaiting assignment of a chief patron.

Newsletter Proposal Circulated by Dr. Crabtree. Ms. Yeatts advised that Dr. Crabtree is requesting legislation to require the Board to publish a newsletter twice a year. Dr. Snyder asked to be recused because he had discussed the matter with Dr. Crabtree but had not seen the draft bill. Dr. Zimmet advised that the Regulatory and Legislative Committee recommends that the Board strongly oppose the bill. Ms. Pace moved to accept the Committee's recommendation to take the position of strongly opposing Dr. Crabtree's bill. The motion was seconded and carried.

Regulatory Actions Status Report. Ms. Yeatts presented a chart of the current regulatory actions, noting that the amendment to amend the provision for scaling and/or root planning is at the Governor's office, awaiting approval.

Administration of Local Anesthesia and Nitrous Oxide by Dental Hygienists. Ms. Yeatts presented the proposed regulations for final adoption, noting the change recommended by the Regulatory and Legislative Committee in response to comments received. Additionally, she noted that the Committee agreed that the terms "administration" and "monitoring" may need clarification and will be reviewed during regulatory review.

Dr. Levin asked to be recused from the voting. The motion from the Regulatory and Legislative Committee for adoption as amended carried.

Consideration of Fast Track Action for Law Exam CE Credit. Ms. Yeatts advised that the Regulatory and Legislative Committee discussed offering CE credit for individuals passing the law exam. After reviewing the provisions for acceptable subject matter and approved sponsors, the Committee decided regulatory action is not needed. The Committee motion to grant three (3) hours of CE credit for passage of the examination carried. It was noted that this credit could not be earned if the exam is taken pursuant to a Board Order.

Consideration of Fast Track Action for Inspection Fee. Ms. Reen noted that the inspection fee was included in the fee proposal charts for fee increases which the Board adopted but was not included in the regulations. She requested that this fee be added to the regulations so that Board Orders might reference the fee in effect at the time of the inspection rather than specifying a specific dollar amount. The motions by the Regulatory Legislative Committee to take fast track action to include the fee in 18VAC60-20-30 carried.

**BOARD
DISCUSSION/ACTION:**

Letter from WREB. Dr. Zimmet presented the response from WREB to concerns about their scoring procedures for decay as an information item.

AADE Mid-Year Meeting – March 9-10, 2008. Dr. Zimmet asked for Board interest in attending the AADE Mid-year Meeting. Any interested Board member was requested to contact Dr. Zimmet and Ms. Reen. Dr. Levin stated his interest.

Ozone Treatment. Dr. Snyder presented articles for the Board's information on ozone treatment therapy.

Inquiry from Dr. Johnston. Dr. Zimmet presented correspondence received from Dr. Johnston requesting Board opinion on whitening centers. Ms. Ryals advised that Board executives have been instructed to be cautious about giving legal guidance based on an inquiry. Mr. Casway stated that as a standard response, regulations should be cited only and that factual determinations are made only in proceedings. Ms. Wingfield recommended that Ms. Reen draft a letter to Dr. Johnston citing the laws that he might consider as he seeks to answer his question and consult with personal legal counsel. She suggested that Ms. Reen respond to similar letters in the same manner.

Inquiry from Dr. West. Dr. Zimmet reference correspondence received from Dr. West and suggested that his concerns be addressed by the Regulatory Legislative Committee during regulatory review.

Board of Nursing Code of Conduct. Dr. Zimmet presented the code of conduct as information and asked if the Board was interested in developing one. The issue was referred to the

Executive Committee for discussion.

Case Review Day. Dr. Zimmet requested that the Board schedule a day to devote to conducting probable cause reviews to address the backlog of cases pending probable cause review. He reported that a few members stayed following the Formal Hearing on Thursday and went through about twenty cases in two hours. The Board agreed to holding a review day and tentatively set the date as February 8, 2007. Dr. Zimmet also requested that Board members work on cases following informal conferences whenever possible. Ms. Wingfield cautioned that this approach was acceptable so long as cases were not reviewed and discussed by the group. Dr. Zimmet agreed, stating that a case would be reviewed by one member.

Bylaw Change. Dr. Zimmet asked for Board approval of the bylaws change to include knowledgeable professionals as possible agency subordinates as recommended by the Executive Committee. Dr. Pirok moved to approve the change to the bylaws. The motion was seconded and carried.

UPDATE ON ENFORCEMENT

Ms. Lemon presented a power point presentation on dentistry cases at Enforcement then discussed with the Board ways to improve investigations. She acknowledged that duplication of quality x-rays was still a hurdle and that cases submitted anonymously were often challenging. Ms. Sissom commented that she had recently acquired a duplicator that might be a viable resource. Dr. Zimmet offered to have Board members attend regional meetings to discuss investigations of dentistry cases. Ms. Lemon readily accepted the offer.

BOARD COUNSEL REPORT

AADE Attorney Roundtable Meeting. Mr. Casway thanked the Board for allowing him to attend the attorney roundtable which he noted is a valuable opportunity to share ideas, discuss issues with his peers and present information to the AADE General Assembly.

Litigation Update.

Closed Meeting. Upon Mr. Casway's request, Dr. Gokli moved that the Board enter into a closed meeting pursuant to §2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, it was moved that Board staff, Sandra Reen, Alan Heaberlin, and Catherine Chappell, and Board counsel, Howard Casway attend the closed meeting because their presence in the closed meeting

was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Gokli moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Zimmet noted that no action was taken during the closed meeting.

Presentation on Conducting Formal Hearings. Mr. Casway provided the following suggestions to the Board on conducting formal hearings:

- Come prepared, know the case
- Respect your role of judging the evidence and testimony
- Ask questions pertinent to the allegations
- Focus narrowly on the issues, evidence and testimony
- Pay attention to what other members ask
- Resolve any questions with witnesses
- Consider developing a Code of Conduct similar to the document used by the Board of Nursing as an educational tool.

**EXECUTIVE
DIRECTOR'S
REPORT/BUSINESS**

Report on Case Activity. Mr. Heaberlin presented an update on case disposition in which he noted:

- Progress being made on the older cases and that because of the change from three reviewers to one reviewer, an increase in the number of cases closed.
- Thirteen CCA's and approximately 35 advisory letters had been issued in 2007.
- The use of prehearing consent orders has been helpful in closing cases earlier.

Mr. Casway suggested using Board members as agency subordinates to hear D cases noting that the decisions would need to be ratified by the Board. Ms. Reen noted that Mr. Heaberlin is monitoring cases for assignment to subordinates to determine when using one would speed up the process.

Dr. Levin moved to authorize Board members to serve as agency subordinates for D cases. The motion was seconded and carried.

Budget Update. Ms. Reen reported that the Board's deficit was about \$18,000 lower than projected at the close of FY'07 which was a good indicator that the Board would be successful in reaching its goal of being in the black by the close of FY'09.

Presentation on Recondkeeping. Ms. Reen reported that the presentation she, Dr. Snyder, Dr. Young and Mr. Heaberlin presented to the Roanoke Valley Dental Society was provided for information. She agreed to have the presentation posted on the web page.

Key Measures Report. Ms. Reen reviewed the chart showing the performance of the boards on the three key performance measures. She advised that Dentistry is performing well on two of the three measures with and Applicant Survey Approval Rate of 93.3% to the goal of 97% and a 100% rate for Processing 90% of Applications within 30 days. She noted that the Board was no where near meeting the goal of Closing Patient Care Cases within 250 days with only 24.6% of the cases closed meeting the timeframe.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 2:55 p.m.

Paul N. Zimmet, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date